The Solicitors' Journal

Vol. 96 November 22, 1952 No. 47

CURRENT TOPICS

Town and Country Planning: The Changes

THE Government's decision to abolish development charge in respect of development begun on or after 18th November, except where it has been included in a determination of development charge with other development carried out before that date, is a bold stroke, but one which will cause little surprise. In the White Paper issued this week (Cmd. 8699) it is pointed out that land for development has not, generally speaking, changed hands at or near its value for existing use, and that to the extent that it does not do so the charge represents a burden on development: correspondingly, to the extent that the existing use value basis is effective it has tended to keep land off the market. Hence the Government has decided that modification of the financial provisions is not enough, but that more drastic measures are required. Accordingly, with the abolition of development charge, the *raison d'être* of the £300m. fund due to be distributed next July vanishes, but it is nevertheless proposed to pay compensation for loss actually sustained on the basis of up to 100 per cent. of the value of the admitted claims. Such compensation will be payable, for example, where land is compulsorily acquired or where development is severely restricted by planning control. Certain types of planning restrictions, however, will be excluded from ranking for such compensation, notably those based on the principle of "good neighbourliness." These proposals have serious practical difficulties: they envisage the right to compensation as running with the land, but in many cases admitted claims on the £300m. fund have been assigned or have otherwise passed into different ownership, and for this and other similar reasons it is not surprising that definitive legislation is to be deferred until the autumn of 1953. Meanwhile a Bill has this week been introduced to abolish the liability to development charge, to relieve the Treasury of the obligation to distribute the £300m. fund, and to make the approval of the Central Land Board necessary to assignments of claims on that fund after 18th November (this last in order to prevent still further complication of the situation pending next year's legislation).

Position of Persons already affected by the Financial Provisions

A USEFUL note issued by the Ministry of Housing and Local Government gives illustrations of the effect of the proposals in various circumstances. In the different kinds of case the principles will apply, the note states, as follows: (*a*) People who hold admitted claims and whose land had been bought by public authorities at existing use value will be paid compensation on the basis of their claims plus accrued interest, as soon as possible after the main Bills are passed. (*b*) People who hold admitted claims and who have been refused permission to develop, and who would be due for compensation under the new proposals, will similarly be paid compensation on the basis of their claims plus accrued interest as soon as possible after the main Bills are passed. (*c*) People who hold admitted claims and who have sold land privately, with a view to development, but at existing use

CONTENTS

value, will also be paid. If they sold at something above existing use value they will only be paid as much as is needed to make up the price already received for the land to the amount of the 1947 development value. If they sold at full development value they will get nothing. (*d*) People who hold admitted claims and who paid development charge will be paid on the claim up to the amount of the charge they have paid. Although development charge is not to be repaid as such, the people who hold admitted claims are entitled to expect some payment; when they paid the charge it was on the understanding that their claims would be met. (*e*) People who paid charge but who do not hold an admitted claim will get nothing, except where they bought the land at something above existing use value. If they did that they have already, in effect, paid twice over for development value; once to the person who sold them the land and once to the State by way of development charge. As the Government is going to cut down the payment in these cases to the person who sold the land, because he has already had something on account of development value from the person who bought, the balance will be available for the person who paid the charge. (*f*) People who have bought claims separately from land may receive payment where payment, under the new proposals, is due on the claim; but the payment will be limited to the amount which they gave. The note is accompanied by further information in the form of questions and answers on the Government's proposals. From these it appears, *inter alia*, that the system for claiming compensation will be that when a person has been refused permission to develop he will be able to send to the appropriate Government department a request for compensation. The department will then see if there is a claim on the £300m. fund registered against the land, and whether the case is one in which compensation ought to be paid. If these questions are affirmatively answered, the claim will be paid.

Emergency Laws (Miscellaneous Provisions) Bill

THE preamble to the Emergency Laws (Miscellaneous Provisions) Bill, which received its first reading in the Lords on 5th November, was set out in last week's issue (at p. 749). Clause 1 enacts the provisions of Sched. I, which reproduces certain Defence Regulations, with minor adaptations and transitional provisions. These include those relating to tractors and trailers under ss. 9 (3) and 18 respectively of the Road Traffic Act, 1930, the extension of time for bringing proceedings under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, the duty of the Minister of Agriculture and Fisheries to withhold a certificate under the Rent Restrictions Acts in certain cases, the amendment of s. 3 (3) of the Import, Export and Customs Powers (Defence) Act, 1939, and extension thereof as respects goods found in Northern Ireland, a number of amendments of the Compensation (Defence) Act, 1939, the extension of the power of the Minister of Supply to make byelaws under the Military Lands Acts, 1892 to 1903, and the destruction of valueless documents under s. 1 of the Public Record Office Act, 1877. Other provisions in the Bill continue the Defence (Trading with the Enemy) Regulations, 1940, without limit of time, subject to a power of revocation by Order in Council (cl. 2), give permanent power to control certain explosives (cl. 3), permanent power with respect to the issue of British seamen's cards (cl. 4) and power to local authorities to keep in being some 35,000 war-time allotments (cl. 5), exempts harvesters' buses from licensing under Pt. IV of the Road Traffic Act, 1930 (cl. 6), removes certain limitations imposed on the court with regard to the exercise of the powers conferred by virtue of the Settled Land and Trustee Acts (Court's General Powers) Act, 1943 (cl. 7), and empowers certain naval officers to take affidavits and declarations outside the United Kingdom (cl. 8).

The Queen at Inner Temple Hall

A VISIT by a reigning monarch to the domains of the law is a memorable occasion in itself, and the visit of QUEEN ELIZABETH THE SECOND to Inner Temple on 13th November was rendered even more memorable by reason of its purpose, the laying of a foundation stone for the new Inner Temple Hall. A plan of noble simplicity, by Sir HUBERT WORTHINGTON, provides for a building containing, in addition to the hall, offices, library and parliament room. It was no mere coincidence that the Temple suffered more heavily than most places in the most savage attack on human freedom in history, and now that it is rising again from the rubble of war, it is possible to picture not only the new Temple, but also the new age into which, under the aegis of a gracious and beloved Sovereign, we are now entering.

Local Coronation Celebrations

A CIRCULAR has been sent by the Ministry of Housing and Local Government to all local authorities in England and Wales informing them that it has given a general sanction to their "reasonable expenses" in connection with any of their local Coronation celebrations (Circular No. 79/52, 7th November, 1952). The issue of this sanction is not intended in any way to discourage subscriptions or other private beneficence. It is Her Majesty's express wish that the celebrations should be as simple as possible and that all undue expenditure should be avoided. Any painting or decoration which requires building labour should, the circular states, be done during the winter months, if possible. Orders for flags and decorations should be placed as soon as possible in order that employment may be spread economically over the next few months and orders completed in good time. In the case of parish councils, the sanction does not affect the provisions of s. 193 (3) of the Local Government Act, 1933, limiting the amount which may be raised in any financial year to meet their expenses.

War and the Board of Trade

SOLICITORS who were concerned with the enforcement of the Board of Trade's multifarious but necessary regulations during the war will be interested in a volume published on 20th November (H.M.S.O. and Longmans, Green & Co., Ltd., 37s. 6d. net) entitled "Civil Industry and Trade." It is primarily a study of Government control, prepared from Government papers. The documentary evidence consisted of 12,000,000 files, taking up sixteen miles of shelving. The extent of the novel experimentation that had to be done is shown by the fact that the first world war, which had bequeathed experience of food control and shipping control, had left only a slight acquaintance with price control and standard clothing. On some of the more unfortunate effects of controls, the increase of crime, black marketeering, spying by Government officers and the many cases in which Government officers took upon themselves the odious rôle of *agent provocateur*, advocates with war-time court experience are competent to lay emphasis. This study is a highly scientific account by Messrs. E. H. HARGREAVES and M. M. GOWING, in the United Kingdom Civil Series of the History of the Second World War in relation to industry and trade, and it does not develop into a general discussion of control or planning. Those who have had experience of controls will find this study as absorbing as any romantic novel, for it is an objective account of the details of one aspect of a high adventure which none of us would like to see repeated.

NEW INTESTACY RULES—III

Rights over Matrimonial Home

In recent years the " statutory legacy " of £1,000 payable to a surviving husband or wife on intestacy has often been much less than the value of the matrimonial home. Consequently, unless all other persons benefiting on the intestacy have been of full age and have given their consent, it has not been possible for the surviving husband or wife to take the matrimonial home in satisfaction of his or her share on the intestacy, and so, in many cases, it has had to be sold. One of the reasons which led the Committee on the Law of Intestate Succession to suggest an increase in statutory legacies was that the surviving husband or wife would thereby be placed in a position where he or she could take the matrimonial home in part satisfaction of the legacy.

Under the Administration of Estates Act, 1925, s. 41, the personal representatives may appropriate any part of the estate in satisfaction of any interest, provided that a beneficiary entitled absolutely gives his consent. Where the matrimonial home has been of less value than £1,000 it has been possible to use this power in order to appropriate the house in part satisfaction of the legacy, but it must be noted that the personal representatives had a discretion whether or not to make an appropriation. Schedule II to the Intestates' Estates Act, 1952, contains a new code of rules whereby the surviving husband or wife may require the matrimonial home to be appropriated in or towards satisfaction of his or her interest in the residuary estate. The circumstances in which this can be done are closely defined and must be examined carefully.

Paragraph 1 (1) of Sched. II provides that, where the residuary estate of the intestate comprises an interest in a dwelling-house in which the surviving husband or wife was resident at the time of the intestate's death, the surviving husband or wife may require the personal representative, in exercise of the power conferred by the Administration of Estates Act, 1925, s. 41, to appropriate the said interest in the dwelling-house in or towards satisfaction of any absolute interest of the surviving husband or wife in the real and personal estate of the intestate.

In the first place, it is interesting to note that the description " matrimonial home," although used in the 1952 Act, may be misleading. The provisions apply to a dwelling-house in which the surviving husband or wife was resident at the time of the intestate's death. It is not necessary that the intestate should also have been resident in the same house immediately before his or her death. " Dwelling-house " includes any garden or ground attached to and usually occupied with it, or otherwise required for its amenity or convenience.

The surviving husband or wife may elect to have an appropriation in or towards satisfaction of *any absolute interest*. An " absolute " interest is stated by para. 1 (4) to include the capital value of his or her life interest in half the residuary estate which he or she has elected to have redeemed (as to which, see *ante*, p. 739). The result is that the power is exercisable in or towards satisfaction, first, of a statutory legacy of £5,000 or £20,000, as the case may be, secondly, of the surviving husband's or wife's half share in the residue after payment of the £20,000 where no issue of the intestate survived, and, thirdly, of redemption money for a life interest (but not of a life interest which has not been redeemed).

Cases will occasionally occur in which the dwelling-house is of greater value than the interest of the surviving spouse. For instance, if the intestate left issue, the only benefit against which appropriation can be claimed (unless the life interest in half the residue is redeemed) is the statutory legacy of £5,000, and the matrimonial home may be worth more. In order to deal with such a case, para. 5 (2) provides that there may be an appropriation of an interest in a dwelling-house in which the surviving husband or wife was resident at the time of the intestate's death, partly in satisfaction of an interest of the surviving husband or wife in the residuary estate, and partly in return for payment of money by the surviving husband or wife. This enables the survivor to make up any balance in value out of his or her own property.

It is expressly provided that, in making the appropriation, the personal representatives shall have due regard to the requirements of the Administration of Estates Act, 1925, s. 41, as to valuation. Under s. 41 (3), for the purposes of appropriation, the personal representatives may ascertain and fix the value of the property concerned as they think fit, and shall, for that purpose, employ a duly qualified valuer in any case where such employment may be necessary. Where an interest in a dwelling-house is appropriated it will normally be necessary to employ a valuer for the protection of the personal representatives, but possibly in some cases the expense of doing this can be avoided as other beneficiaries of full age may agree a value.

Clearly the appropriation of a lease which has only a short time to run would be inconvenient, and so it is provided by para. 1 (2) that the surviving husband or wife may not call for appropriation where the interest of the intestate in the dwelling-house is a tenancy which at the date of the death of the intestate was a tenancy which would determine within the period of two years from that date or is a tenancy which the landlord by notice given after that date could determine within the remainder of that period (e.g., a yearly tenancy).

The Act also anticipates difficulties where the dwelling-house is used for business purposes, or forms part only of a building. In the first place, para. 1 (5) provides that where part of a building was, at the date of death, occupied as a separate dwelling, that dwelling shall be treated as a separate dwelling-house. In such a case appropriation may be claimed, unless an interest in the whole of the building is comprised in the residuary estate, in which event application to the court will be necessary under the rule next stated.

Where the dwelling-house in question (*a*) forms part of a building and an interest in the whole of the building is comprised in the residuary estate, or (*b*) is held with agricultural land and an interest in the agricultural land is comprised in the residuary estate, or (*c*) was used wholly or partly as an hotel or lodging-house at the time of the intestate's death, or (*d*) was partly used at the time of the death for purposes other than domestic, the surviving husband or wife may not elect to have the dwelling-house appropriated, unless the court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the residuary estate (other than the interest in the said dwelling-house) or make them more difficult to dispose of, so orders (1952 Act, Sched. II, para. 2). In the cases mentioned, application to the court will have to be made in sufficient time to enable appropriation to be claimed within the restricted period mentioned below, if an order is made enabling this.

Procedure on Appropriation

Strict rules are laid down for the time within which appropriation may be claimed; by para. 3 (1) of Sched. II this must be not later than twelve months from the first taking out of a general grant of representation with respect to the intestate's estate, and the right may not be claimed after the death of the surviving husband or wife. The period of

twelve months may, however, be extended by the court, in the same circumstances as the period for election to have redemption of a life interest (*ante*, p. 740; for instance, if the limitation would operate unfairly because probate was first taken out, and later revoked). It is necessary to remember that personal representatives may, but cannot be required to, exercise their power of appropriation under s. 41 even after this time (provided they still hold the property as personal representatives).

The right is exercisable, except where the surviving husband or wife is the sole personal representative, by notifying the personal representative or representatives (or the remainder, if the surviving spouse is one) in writing. Such a notification is not revocable except with the consent of the personal representative. However, in order that the surviving husband or wife may judge whether it is advantageous to claim an appropriation, he or she may require the personal representative to have the relevant interest in the house valued as for appropriation before deciding whether to exercise the right.

The personal representative may, of course, be obliged to sell the house in course of administration owing to want of other assets. Otherwise, he may not sell, without the written consent of the surviving spouse, during the period of twelve months in which the surviving spouse may claim appropriation. The personal representative might be in some difficulty in dealing with the "mixed" properties where appropriation can be claimed only with the consent of the court (see *supra*). Consequently, it is provided that they, as well as the surviving spouse, may apply for a decision as to whether the spouse can call for appropriation; if the court decides that the right is not exercisable, it may authorise the personal representative to dispose of the interest in the dwelling-house within the period of twelve months. Thus, if necessary, the personal representative can force a decision as to whether he must retain one of these "mixed" properties for that period or whether he may sell or otherwise dispose of the interest within the customary period of one year from death. Where the court extends the period during which the right to appropriation exists, it may apply these rules as to sales, etc., to the extended period. These restrictions on dispositions do not apply where the surviving husband or wife is the sole personal representative or one of two or more personal representatives; presumably in these cases the surviving spouse may exercise adequate control in the capacity of personal representative (the authority over realty, including leaseholds, being joint). Fortunately a purchaser from personal representatives need not inquire whether there is still any right in a surviving spouse to require appropriation, as the restrictions on sale are stated in the Act not to confer any right on the surviving spouse as against a purchaser.

In many cases the surviving husband or wife will be either the sole personal representative or one of several personal representatives, and so will be in a fiduciary position in making an appropriation. Where he or she is one of two or more personal representatives the Act provides that the rule that a trustee may not be a purchaser of trust property shall not prevent the surviving husband or wife from purchasing out of the estate an interest in a dwelling-house in which the surviving husband or wife was resident. At first sight one would ask whether this rule would protect a purchaser from a surviving husband or wife, for instance, from an obligation to inquire as to the adequacy of the consideration. The answer appears to be that a purchaser from the surviving husband or wife will not be concerned to look to the adequacy of the consideration or any other circumstance. The appropriation will normally be carried out by a simple assent from the personal representatives to the surviving husband or wife, behind which the purchaser will not be entitled to look. It will be remembered that under the Administration of Estates Act, 1925, s. 36 (7), an assent or conveyance by a personal representative in respect of a legal estate operates in favour of a purchaser, unless notice of a previous assent or conveyance has been placed on the letters of administration, as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him. Thus, the purchaser is not even entitled to inquire whether an appropriation was made or some other arrangement has been made by beneficiaries. Further protection is given by s. 41 (7) whereby in favour of a purchaser an appropriation is deemed to have been made in accordance with the requirements of the section and after all requisite consents have been given.

It is immediately apparent that the equitable rule preventing a trustee from purchasing trust property is not removed by the 1952 Act where the surviving husband or wife is the sole personal representative. Similarly, the Act contains no provision as to the manner in which the right to appropriation is exercisable where the surviving spouse is sole representative. On this point one must bear in mind the power of appropriation of a personal representative under the Administration of Estates Act, 1925, s. 41 (see *supra*). The object of Sched. II to the Intestates' Estates Act, 1952, is merely to give a surviving spouse the right to insist on appropriation being carried out under s. 41. Therefore, where the surviving spouse is sole personal representative he or she may use the power in s. 41 and does not require any assistance from the 1952 Act. The better opinion appears to be that, if a sole personal representative executes an assent in his or her own favour, without recitals or other explanation of the manner in which he or she is entitled beneficially, a purchaser must accept the assent as passing the legal estate (Administration of Estates Act, 1925, s. 36 (1), (7)). No doubt the sole personal representative would remain liable to attack by others beneficially interested on the ground that as trustee he may not purchase from the estate (an appropriation being in substance a purchase), but if the house was competently valued this would not be a matter to cause concern.

Finally, the possibility that the surviving spouse is under disability is dealt with. If he or she is of unsound mind the committee or receiver, or, if none, the court, may act on his or her behalf; if he or she is an infant, by a rather unusual provision, a requirement or consent is as valid as if the surviving spouse were of full age.

How will these rules operate in practice? In the first place no doubt most estates will be dealt with by agreement between all beneficiaries if of full age. The only problem then is the choice of conveyancing machinery, by assent or otherwise, for vesting the matrimonial home in the surviving spouse. If such agreement is not possible (e.g., if infants are concerned) the personal representatives will often be ready to agree to appropriate under the power in the Administration of Estates Act, 1925, s. 41. If we are not careful we will overlook the fact that there is no need to apply the rather complicated provisions of Sched. II to the Intestates' Estates Act, 1952, if the representatives are able and willing to use their power under s. 41. Therefore, it is likely that in practice Sched. II will not be used very often, although it may be advisable to serve notice on behalf of a surviving spouse if the period during which that action can be taken has almost expired and the personal representatives have not appropriated.

J. G. S.

A Conveyancer's Diary

STATUTE LAW AND COVENANTS AFFECTING LAND

THE often heard observation that the whole of the law relating to the enforcement of covenants restricting the use of land is judge-made is not quite accurate. It is, of course, true that the principles on which these covenants have been applied, in certain circumstances, since *Tulk* v. *Moxhay* (1848), 2 Ph. 774, and a little before were evolved by the old Court of Chancery without the assistance of the Legislature, but there are two statutory provisions of the nineteenth century which are nowadays sometimes invoked to assist the enforcement of covenants concerning land. The first of these is s. 5 of the Real Property Act, 1845, which, if not exactly re-enacted in s. 56 of the Law of Property Act, 1925, has been to some extent perpetuated by the latter section (there is a striking difference in some respects between the language of the two sections); and the second is s. 58 of the Conveyancing and Law of Property Act, 1881, which has now been replaced, with no very significant modification, by s. 78 of the Law of Property Act, 1925. The inter-relation of these provisions both mutually and with the non-statute law (one hesitates to use the expression "common law" in speaking of something which has been so largely a creature of equity) is very confusing, as reference to some of the *obiter dicta* in the interesting case of *Smith & Snipes Hall Farm, Ltd.* v. *River Douglas Catchment Board* [1948] 2 K.B. 500 will, I think, show.

By an agreement under seal, *X*, the owner of Blackacre, agreed with the catchment board that in consideration of the board's doing certain works to the banks of a river in the vicinity of Blackacre and maintaining for all time the works when done, she would contribute to the cost. The works so agreed upon were duly carried out by the board. Subsequently, *X* sold and conveyed Blackacre, with the benefit of the board's agreement to maintain the works in question, to the first plaintiff, and later the second plaintiffs went into occupation of Blackacre as yearly tenants. Floods broke the banks of the river, and Blackacre was flooded. The plaintiffs claimed against the defendant board both in tort and for breach of its agreement. The claim in tort was dismissed, for reasons unconnected with the claim for breach of the agreement, but under the latter head the evidence showed that the board had not constructed or maintained the banks in accordance with its agreement with *X*, and had thus been *prima facie* guilty of a breach of contract for which it was liable to the plaintiffs in damages. The board nevertheless contended that it was under no liability to pay damages either (*a*) because the benefit of the board's covenant with *X* did not run with the land so as to benefit the plaintiffs, the owners and occupiers of Blackacre at the time when the damage occurred, or (*b*) because the land for the benefit of which the covenant had been entered into had not been precisely defined in the deed between *X* and the board. The Court of Appeal gave judgment for the plaintiffs, holding on the first point that the covenant did run with the land, and that the plaintiffs were able to sue on it by reason of s. 78 of the Law of Property Act, 1925, and on the second point that, although the land to be benefited (Blackacre) was not precisely defined in the deed of agreement, it could be ascertained without difficulty by extrinsic evidence—*id certum est quod certum reddi potest.*

It will be observed that the board's covenant in this case was a positive covenant; and the burden of it would not, therefore, have run with the covenantor's land so as to bind a successor in title to that land (*Austerberry* v. *Corporation of Oldham* (1885), 29 Ch. D. 750); but as the question in this case concerned not the burden, but the benefit, of a covenant relating to land, this was immaterial. As Sir George Farwell observed in *Rogers* v. *Hosegood* [1900] 2 Ch. 388, at p. 395, there is "no difficulty in holding that the benefit of a covenant runs with the land of the covenantee, while the burden of the same covenant does not run with the land of the covenantor": the two problems are quite distinct, and the result of this case would have been the same if the covenant on the part of the board had been negative or restrictive in substance, and not positive. This must always be so where the defendant is the original covenantor.

The *ratio* of the Court of Appeal's decision, as it appears particularly from the judgments of Tucker, L.J. (as he then was), and Somervell, L.J., was this: to ascertain whether a covenant runs with the land it is first necessary to ascertain whether it "touches and concerns" the land; a covenant is said to touch and concern the land if it either affects the land as regards mode of occupation or its value (*Congleton Corporation* v. *Pattison* (1808), 10 East, at p. 135); by this standard the covenant in this case clearly "touched and concerned" Blackacre, and the plaintiffs could have sued upon it if the covenant had been made with *X* and her successors in title, owners of Blackacre; the covenant had not been so made, having been made with *X* alone, but s. 78 of the Law of Property Act, 1925, filled this gap and enabled the plaintiffs to sue upon the covenant. This section provides (by subs. (1)) that "a covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed."

The third member of the court was Denning, L.J., and although he founded his judgment on a somewhat wider ground, up to a point at least the reasons that he gave for reaching the same conclusion as his learned brethren were, apparently, similar. In the opinion of Denning, L.J., the principle on which the benefit of a covenant runs with the land so as to be capable of being sued upon by a stranger to the covenant is not so much an anomaly in a law of contract, which in general insists upon privity of contract as a qualification to sue (an anomaly, one may say in passing, which, if it be one, has been recognised since the *Prior's Case* (1368)), as an example or application of another principle, viz., "that a man who makes a deliberate promise which is intended to be binding, that is to say, under seal or for good consideration, must keep his promise, and the court will hold him to it, not only at the suit of the party who gave the consideration, but also at the suit of one who was not a party to the contract, provided that it was made for his benefit." This is the principle which the learned lord justice, when at the Bar, sought—not with complete success—to persuade the Court of Appeal to adopt in *Re Schebsman* [1944] Ch. 83; but whatever the underlying reason for the rule which the Court of Appeal applied in the present case may have been—whether the rule be an application of, or an exception to, a broader principle—it was fundamental that the ability of the plaintiffs to sue was identical with that of the plaintiff in the *Prior's Case*. The facts were different, but that only meant that the covenant had to be examined to see whether it "touched and concerned" the plaintiffs' land, and s. 78 (1)

of the Law of Property Act, 1925, had to be brought in because the board's covenant had not been made (as the Prior's had in effect been made) with *X* and her successors in title; but the rule of law relevant to the two cases was the same. Up to this point, therefore, the judgment of Denning, L.J., in the present case, although differing in emphasis from those of the other members of the court, was essentially on the same lines.

At this point, however, Denning, L.J., referred to s. 56 (1) of the Law of Property Act, 1925. This now enacts that "a person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement, over or respecting land or other property, although he may not be named as a party to the conveyance or other instrument." Although this provision is, as a whole, much enlarged compared with the corresponding section of the 1845 Act (which, as Simonds, J. (as he then was), observed by way of reminder in *White* v. *Bijou Mansions, Ltd.* [1937] Ch. 610, was an Act to amend the law relating to real property), so far as it relates to covenants respecting land the changes made in 1925 appear to be purely verbal, and it is therefore still true to say of this provision, as it was of its predecessor, that to bring a covenant within it it is necessary for that covenant to run with the land (see *Dyson* v. *Forster* [1908] 1 K.B. 629, affirmed (and on this point left unaffected) by the decision of the House of Lords reported at [1909] A.C. 98). There is very little authority on the scope and effect of this section, the historical reason for which is explained in *White* v. *Bijou Mansions, Ltd., supra*, but of it Lord Greene said in that case that "the mere fact that somebody comes along and says: 'It would be useful to me if I could enforce that covenant,' does not make him entitled to enforce it under [that provision]" (see [1938] Ch., at p. 365). Before a person can enforce it he must be a person who falls within the scope and benefit of the covenant, according to its true construction. Recognising that limitation, Denning, L.J., in the case under review, was inclined to think that "a person may enforce an agreement respecting property made for his benefit, although he was not a party to it," and that, so construed, s. 56 (1) "is a clear statutory recognition of the principle to which [the learned lord justice] had referred."

These observations were strictly *obiter*, but they have had the effect of enlarging, in the estimation of some practitioners, the ostensible scope of s. 56 (1) by the suggestion implicit therein that cases in which the benefit of a covenant affecting land cannot be shown to have descended (whether with or without the aid of s. 78 (1)) so as to support an action on the principle of the *Prior's Case*, may be brought within s. 56 (1). Section 56 (1) now applies to personal as well as to real property, and so far as the former is concerned, it may be (as Denning, L.J., suggested) that if the case had been argued by reference thereto, *Re Miller's Agreement* [1947] Ch. 615 would have been otherwise decided. That at any rate is a field for legitimate speculation. But when it comes to covenants affecting land (to which s. 56 (1) applied even in its old, pre-1926, dress), the question arises whether a covenant can be thought of within the scope and benefit whereof, according to its true construction, the plaintiff can show himself to fall, which is not also a covenant which, according to its true construction, is enforceable under the principle of the *Prior's Case*, as recognised in *Rogers* v. *Hosegood, supra*. According to that decision, a covenant, to be so enforceable, must have been intended to run with the land. Having regard to the requirements which must be satisfied before a covenant can be said to run with the land, it is pretty clear that the intention underlying such a covenant must be that it should benefit the owner for the time being of the land, and where is the difference, then, between this principle of enforceability and that which is said to have been created by s. 56 (1) or its predecessor in the statute book? With all respect, it is difficult to see how any practical difference can exist. If so, there is nothing in *Smith and Snipes Hall Farm, Ltd.* v. *River Douglas Catchment Board, supra*, so far as covenants affecting land are concerned, to extend the range of circumstances in which such covenants are already, quite apart from that decision, enforced.

"A B C"

Landlord and Tenant Notebook

THE LEASEHOLD PROPERTY (TEMPORARY PROVISIONS) ACT: INTENTION TO RECONSTRUCT

In *J. W. Smart* (*Modern Shoe Repairs*), *Ltd.* v. *Hinckley and Leicestershire Building Society* [1952] 2 T.L.R. 684, *post*, p. 763 (C.A.), Sir Raymond Evershed, M.R., has given us a useful judgment on the operation of s. 12 of the Leasehold Property (Temporary Provisions) Act, 1951, which confers the right to a new tenancy in certain circumstances.

The applicants had carried on their business (the one indicated by their name) in a shop in Leicester, the lease of which expired at Michaelmas, 1952. The respondents had acquired the property and the adjoining premises in 1950. The adjoining premises were occupied by their agent, who also carried on the professions of an estate agent and of an accountant "or at any rate one of them," on those premises. They had formed the intention of throwing the two ground floors into one so as to give the agent a single office or series of offices. Plans had been prepared, but no costing had been done; nor had a building licence been sought.

The scheme of s. 12 is as follows: the first subsection creates the general right to a new tenancy, an important qualification being "if in all the circumstances of the case it appears reasonable to" order a grant. The second subsection limits the term of the new tenancy to a year. Then subs. (3) sets out a number of sets of circumstances, (*a*) to (*e*), in which the court shall not order a grant. Three of these—(*a*) which deals with broken agreements; (*b*) concerning the offer of suitable alternative accommodation, and (*d*) protecting the public interest when a public authority has an interest—did not enter into the picture. The respondents put forward (*c*) and (*e*). The former runs: "that the landlord *reasonably* requires possession in order that the premises the subject of the expiring tenancy, or a substantial part of those premises, may be demolished or reconstructed"; the latter: "that having regard to all the circumstances of the case greater hardship would be caused by ordering the grant of a new tenancy than by refusing to do so."

The county court judge held that the applicants had brought themselves within the first subsection, and the respondents did not question this finding. He also held that

the applicants succeeded on the hardship issue, and there was no attempt to impugn this decision on appeal when, as those familiar with rent control litigation are well aware, it is extremely difficult to get a hardship balance sheet reviewed. But His Honour also held that the respondents did not reasonably require possession in order that the premises or a substantial part thereof might be demolished or reconstructed, and they contended that this part of the decision was wrong.

The scheme of the section is, as has been seen, such that though it may be found reasonable to order a grant, no grant is to be ordered if the landlord requires possession for the purpose indicated; but the court, agreeing with the decision that the respondents did not in fact require possession for that purpose at all, declined to express any view on the meaning of "reaonably" in para. (*c*). Respondents' counsel suggested that all that was meant was that the landlord must require possession in order, etc., for good sound business reasons, and not capriciously. Possibly the interesting *obiter dicta* of Lord Dunedin and Lord Phillimore in *Tredegar* v. *Harwood* [1929] A.C. 72, criticising the notion of reasonableness favoured by Warrington, L.J., and his colleagues in *Houlder Bros. & Co., Ltd.* v. *Gibbs* [1925] Ch. 575 (C.A.), and insisting that the promotion of self-interest was not incompatible with reasonableness, underlay the proposition; but the Court of Appeal found it unnecessary to go into that question in *J. W. Smart (Modern Shoe Repairs), Ltd.* v. *Hinckley and Leicestershire Building Society*.

The county court judge had expressed his finding and decision in these terms: "I think that in the present case the primary and real object for which the respondents require possession is for occupation by *C*, the agent, and that the reconstruction contemplated by them is only ancillary to that occupation, and is not therefore the real reason for requiring possession." Upholding him, Evershed, M.R., emphasised the fact that the Act is intended to be temporary, the right to possession being postponed for twelve, or possibly twenty-four months, and approved the approach, which he described in these words: "Is there here some project for demolition or reconstruction and, if so, is it reasonable for the landlords to say: 'In order that this project may be brought to fruition and not defeated or delayed, it is reasonable to give us possession now of this particular shop'?"

Denning, L.J., was content to say that, in order that the landlord should bring himself within para. (*c*), demolition or reconstruction must be the immediate and primary purpose.

That paragraph can be compared and contrasted with sub-paras. (ii)–(iv) of para. (*b*) of the Landlord and Tenant Act, 1927, s. 5 (3), which subsection sets out circumstances in which an applicant for a new lease who shows that the compensation for loss of goodwill payable under the Act would not in fact compensate him may yet be denied a grant. The paragraph begins with, "if the landlord proves," and sub-para. (ii) runs, "that he intends to pull down or remodel the premises"; (iii) "that vacant possession of the premises is required in order to carry out a scheme of redevelopment." If there be any subtle reason for the change from the personal to the impersonal, the landlord being the subject in the case of (ii) but not being mentioned anywhere in (iii), the authorities have not yet explained it; one wonders whether a landlord who intended to sell the premises to someone who intended to remodel them would be held to be within (ii). The wording of a proviso, to be mentioned presently, suggests that he would. The facts of *J. W. Smart (Modern Shoe Repairs), Ltd.* v. *Hinckley and Leicestershire Building Society* would, however, fit sub-para. (iii) better, the proposed work being in the nature of carrying out redevelopment rather than of remodelling the premises themselves; or they might come under (iv), which precludes the grant of a new lease when "for any other reason the grant of such a lease of the premises would not be consistent with good estate management, and for this purpose regard shall be had to the development of any other property of the same landlord." These provisions are followed by an express proviso by which the tribunal, when refusing a new lease, "may make it a condition of refusal that if the landlord fails to carry out his intention within such period as may be allowed by the tribunal, the landlord shall pay to the tenant such compensation as the tribunal may fix not exceeding the amount of the loss which the tenant has suffered by reason of having been deprived of his right to the grant of a new lease under this section." Further, the next subsection enables the tribunal to order the grant of a new lease to determine or to be determinable by the landlord in cases in which he shows that, though the premises are not required immediately, they will be so required after the lapse of a certain period.

There is nothing that corresponds to this in the Leasehold Property (Temporary Provisions) Act, 1951; and the reason is, obviously, that its provisions are, or, as Evershed, M.R., cautiously put it, are intended to be, temporary: the term of a new lease granted under the Landlord and Tenant Act, 1927, may be as long as fourteen years. And that, no doubt, is why para. (*c*) of s. 12 (3) of the Act, unlike any of the sub-paragraphs of the Landlord and Tenant Act, 1927, s. 5 (3), contains the word "reasonably."

R.B.

HERE AND THERE

THE QUEEN AT THE INN

SOCIALLY the central event of November in the legal quarter has been the visit of Her Majesty the Queen for the purpose of laying the foundation stone of the soon-to-be-resurrected Inner Temple Hall. The Treasurer, Lord Justice Singleton, and the Senior Bencher, Lord Simon, received her and there were present also the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls. After the ceremony, under an awning set among the ruins facing the gardens, Her Majesty retired with the Benchers to the Niblett Hall. In his address of thanks the Treasurer did not fail to recall that his late Majesty had been a Bencher and Treasurer of the Society, thereby ensuring that should the Queen decide to honour one of the Inns of Court by becoming a member, the Inner Temple at least will not be absent from her mind, though it cannot be that it is without rival suitors. The Benchers of Lincoln's Inn are known to have their aspirations, while Gray's Inn, which has never really got over the agreeable shock of the zenith to which it attained in the sixteenth century, must surely be ambitious of fresh glory in the new Elizabethan era. The portrait of the first Elizabeth has long hung centrally in its Hall; on Grand Nights it drains its loving cup to her "pious, glorious and immortal memory," and there is constantly recurring a totally apocryphal tradition that under a grant of hers it gets its wines duty free. Still, perhaps its strongest claim would be that, alone among the Inns of Court, it has never had a reigning sovereign as a Bencher. It is a pity the solicitors so thoughtlessly allowed their links with the Inns of Chancery to rot away in the eighteenth and nineteenth centuries, for The Law Society, squeezed exiguously between Chancery Lane, Bell Yard and Carey Street, can never rival the spacious glamour of the four

great Inns. But if the solicitors ever had the chance to buy back Staple Inn, rebuild its Hall, reconvert it to its original uses and revive its hierarchy and its customs, they too would have something more to offer a Queen besides their loyal hearts.

REBUILDING THE TEMPLE

UNLIKE Gray's Inn, which has given first priority in reconstruction to its institutional buildings, the Inner Temple has concentrated first on chambers. In the immediate panic of post-war overcrowding it instituted a massacre of all tenants who were not members, even old-established firms of solicitors and long-rooted residents like Harold Nicolson. Now, with King's Bench Walk and Mitre Court Buildings complete and Harcourt Buildings virtually complete, not to mention the Middle Temple's architectural activity in Pump Court and the Cloisters, I understand that the problem that is exercising the Benchers now is finding, rather than rejecting, tenants capable of paying an economic rent for all the amenities that have been deemed indispensable to current standards of comfort. The restoration of the Temple Church goes on steadily if not speedily. Though the desirability of restoring what was itself a decidedly unhappy Victorian restoration (Smirke at a very low level) is debatable, the work is revealing a stimulating collection of architectural puzzles long covered up by later building. Next door, it is hoped, next year will see the house of the Master (or chaplain) rising again in its former lovely Georgian likeness. Georgian enthusiasts will, however, restrain their raptures until they see what actually happens. The filling of the gaps in Gray's Inn Square was, we were told, going to be a reproduction of what was there before, but a somewhat elderly insistence on lifts for tired old legs and a hoisting up of the basements to let in more light (though they're hardly likely to be used for anything but storage anyway) are bound to spoil the matching a bit, when the current work is complete.

NEW HALL

ONE hopes that the new Inner Temple Hall will be more of a success than its immediate predecessor, which there were none to mourn and very few to praise. In a general prospect of the Inner Temple published a little while ago in *Country Life* the projected Hall looked rather like a cinema, with the same sort of canopied entrance but, of course, without coloured lights. One hopes it did it less than justice, though the Society might have done worse than take its inspiration, if not its dimensions, from the charming little Hall (*temp.* Edward III) which was demolished in 1866 to make way for yet another production of the Smirke family, whose hand lay so heavily on Temple architecture in the Victorian era. The square structure standing darkly in the midst of the cleared site, looking rather like an abandoned air-raid bunker, is the last relic of the medieval Hall and its dependencies. Westward of it was the outer buttery with, beyond it, the inner buttery. Both, with the rooms beneath them, were vaulted. Smirke, to enlarge the site of his Hall, destroyed the outer buttery, but the inner buttery, which survived him, survived Hitler also when bombs demolished the rest of the group in 1940–41. In the little book on the Hall which the Inner Temple librarian has just published I was glad to see that an ancestor of mine saved the old Hall in the Great Fire of 1666, evincing a commendable zeal for the Society's property and a manly firmness in his relations with the Benchers: "Richard Rowe, mariner, who had £5 formerly given him by this Society for his pains taken in extinguishing the fire at the end of the Inner Temple Hall, did petition for a further reward, whereupon it is now ordered that the petitioner shall have given him the sum of £5 more as a full and final reward from this Society."

ENTERPRISE

WITHIN an easy stone's throw of The Law Society there was an establishment which announced its business in bold letters on a plate glass window: "Facsimile typing and duplicating service. Typists to the legal profession." Recently there seems to have been a change of policy. The window is now full of nyloned legs, seductive nightdresses and dainty articles of feminine underwear, but the business description is unchanged.

RICHARD ROE.

OBITUARY

MR. C. S. ELWELL

Mr. Claude Simeon Elwell, solicitor, of Bath, Coroner for Bath for twenty-one years before his retirement last March, died on 23rd October, aged 75. He was admitted in 1902.

MR. A. O. EVANS

Mr. A. O. Evans, retired solicitor, of Denbigh, died on 6th November. He was Mayor of Denbigh in 1901–2, and this year relinquished his membership of the Denbighshire County Council, on which he had served continuously since 1898, being made an alderman in 1925. He had been clerk to the Uwchaled justices. He was over 80 years of age and retired in 1921.

MR. A. W. FORSDIKE

Mr. Alfred William Forsdike, O.B.E., Town Clerk of Kingston-on-Thames since 1927, died on 4th November, aged 61. Admitted in 1920, he acted as prosecuting solicitor to Sheffield Corporation and was deputy Town Clerk of Burnley before his appointment to Kingston. He had been elected President of the Mid-Surrey Law Society in October this year (see *post*, p. 767). He was a keen cricketer and for many years had organised the annual Kingston cricket festival.

MR. C. H. GIFFARD

Mr. Charles Henry Giffard, solicitor, of St. Austell, died at St. Austell on 8th November. Mr. Giffard was admitted in 1923 and was 53 years of age. He was clerk to the magistrates of the East Powder division.

MR. L. C. HARVEY

Mr. Leopold Charles Harvey, solicitor, of Spalding, thought to be the oldest practising solicitor in Lincolnshire, has died at the age of 87. Admitted in 1887, he was for many years clerk to a number of drainage boards, including the River Welland Catchment Board, and was a member of the Royal Commission whose report led to the passing of the Land Drainage Act, 1930. He was also over a long period clerk to the governors of Spalding Grammar School and other schools.

MAJOR A. T. HOUGHTON

Major Arthur Theodore Houghton, M.C., solicitor, of Preston and Blackpool, died on 13th November, aged 72. Admitted in 1904, he was an alderman on the Lancashire County Council and a member of the Lancashire Rivers Board, and acted as clerk to the Ribble Fishery Board from 1931 to 1950. He was the author of a book entitled "The Ribble Salmon Fisheries" and was the first president of the Preston Symphony Orchestra.

MR. J. L. JONES

Mr. John Lomas Jones, solicitor, of Woolwich, died on 4th November, aged 66. He was admitted in 1912 and was well known as a lay preacher in Wesleyan churches.

SIR ALLEN POUND

Sir Allen Leslie Pound, Bt., solicitor, of Egham, died on 15th November, aged 64. He was admitted in 1911 and succeeded his father in the baronetcy in 1937.

MR. W. J. ROBBINS

Mr. William Joseph Robbins, solicitor, of the Strand, died on 13th November, aged 82. He was admitted in 1897.

TALKING "SHOP"

TUESDAY, 11TH *November*, 1952

It was on 4th June that I commented in this diary upon the seemingly homicidal tendency of certain testators who, not content with revoking a gift, must constructively slaughter the beneficiary as well. By a coincidence this was just eight days before publication of the report in the All England series of the decision of Vaisey, J., in *Re Spensley's Will Trusts, Barclays Bank, Ltd.* v. *Staughton and Others* [1952] 2 All E.R. 49. *Re Spensley* is an excellent illustration of this type of revocatory codicil. The terms of it were as follows:—

> "I hereby revoke all provisions made in my said will for my niece M.B. and I direct that my said will is to be read as if the name of my said niece M.B. did not occur therein. In lieu thereof I bequeath the sum of £2,000 to be added . . . " to a certain trust fund.

In substance there were two questions to be decided upon this document: first, whether the testator had revoked certain dispositions in favour of M.B.'s children; secondly, whether he had withdrawn from her a special power of appointment.

So far as the first point was concerned, it was plain that, if the codicil were to be taken literally, M.B.'s name would have disappeared from the will; thus the children would have been unidentifiable, orphans as it were of a testamentary blank. Happily, the learned judge, though describing it as an awkward decision, found himself able to resolve this question in favour of the children.

The second point was, if anything, more awkward still, but, being impressed with the value to a parent of such a special power of appointment, Vaisey, J., decided in effect that the power was a provision in M.B.'s favour which the codicil effectively revoked. I see that this decision has been respectfully criticised in another quarter on the ground that a special power of appointment—as distinct from a general power—tends to benefit the appointees rather than the donee. But it is difficult to understand why the benefit to the appointees should be exhaustive of the benefits conferred. Allowing that the appointees benefit, the power may be—and in my experience usually is—of great value to the donee in adjusting the family fortunes. Moreover, if the test of *constancy*, as distinct from *quantum*, be applied it is easy to see that the donee derives a constant (if not pecuniary) benefit from the power, at least until it has been fully and irrevocably exercised. On the other hand, if the term "appointees" be used in the loose sense of "objects of the power," the benefit may be precarious; such objects may be appointees at one date and—as it were—disappointees at another.

THURSDAY, 13TH

G.B.G.'s recent analysis of general and special powers of appointment in their estate duty implications (*ante*, pp. 586-589) brings to mind Miss B. A. Bicknell's suggestion in the *Conveyancer* for last year (Vol. 15, No. 5, at p. 569), which seems to deserve more than the footnote accorded to it. Commenting upon one of those settlements designed to save sur-tax and estate duty, and with particular reference to a special power of appointment exercisable by the settlor-father in favour of certain of his issue, Miss Bicknell says:—

> "The exercise of this special power would appear to be a 'disposition' within s. 44 (1) of the Finance Act, 1940, as extended by s. 46 (1) of the Finance Act, 1950, and accordingly estate duty would be payable as in [the case of] a gift for five years from the date of the exercise of the power."

Miss Bicknell's conclusion may be distasteful to the orthodox conveyancing mind but its logic seems to be inescapable. "Disposition" is defined by s. 59 of the 1940 Act to include "any trust, covenant, agreement or arrangement . . ." And should anyone seek to contend that in its natural meaning "disposition" can refer only to the property of the "disponor"—at best an arguable proposition—there is s. 46 (1) (*b*) of the 1950 Act to make it plain that the Legislature has used the term in no such narrow sense. That subsection in effect protects a "fiduciary disposition," but only if the fiduciary capacity was the creation of another ("the deceased was concerned in a fiduciary capacity imposed on him *otherwise than by a disposition made by him* and in such capacity only"). So it seems that, if the deceased himself conferred the power, it will not avail the beneficiaries to contend that in exercising it he was acting in a fiduciary capacity.

FRIDAY, 14TH

My notes under yesterday's date would not be complete without some clues to the scope of the subject which will appear from the following:—

(1) The sections quoted in Miss Bicknell's footnote are in the main aimed at transactions between close relatives. But, of course, it is also true that it is in favour of close relatives that special powers are usually exercisable.

(2) There is the customary exemption for a disposition made for full consideration and there is appropriate relief for cases of partial consideration. The exemption in favour of certain "fiduciary dispositions" has already been noted.

(3) Accepting Miss Bicknell's view, it seems clear that the special power is not of itself vulnerable; no liability for duty would normally attach unless and until it were exercised. (It must be assumed, of course, that the settlor has survived the settlement for five years.)

(4) As a matter of legislative history, s. 46 (1) of the 1950 Act was passed to counteract the decision in *Re Earl Fitzwilliam's Agreement* [1950] 1 All E.R. 191. Its use by the Revenue as a weapon against special powers in exercise would seem to offend against the traditional view of the special power of appointment. Further, there is a passage at p. 117, Dymond's Death Duties, 11th ed., which suggests that the more lenient view might be adopted in practice.

(5) For those in search of a debating point, there is s. 58 (4) of the Finance Act, 1940, which refers separately to a "disposition's being made" and to a "power's being exercised." Space does not permit of full discussion of this point here, but it is thought that the expressions are not mutually exclusive. The powers to which reference is made are notably those used *passim* the sections dealing with controlled companies.

(6) It will be seen, on reference to the same section, that it is no solution of the problem to vest the power jointly in the settlor and some other person.

WEEK-END REFLECTIONS

It may be a relief to readers to exchange the tedium of the Finance Acts for "the viewless wings of poesy." No prize is, however, offered for placing this quotation, nor for identifying in the following parody the shades of the collaborating poets, the poem parodied or the planning Act:—

> Hail to thee, blithe statute!
> Absurd thou ever wert,
> That from the moon or near it
> Playest thy full part
> In putting strains upon the housing mart.
>
> Thou higher still and higher
> From *terra firma* springest;
> From builder and from buyer
> The blue cuss-words thou wringest,
> And taking more from less,* the less to more thou bringest.†

* Query—Development values from the 1947 landowning community.
† Query—Abated compensation under Part VI to deferred claimants, these being in the majority.

In the golden lightning
Of that Treasury Scheme,
O'er which claims were brightening
Thou dost glint and gleam
Like some unbodied joy of Cheshire cat with cream.

Were all the law infernal
That these long sections veil
Compressed within this journal,
Would planners faint or fail?
I doubt it, said the Editor, turning a little pale.

"'That is not said right,' said the Caterpillar. 'Not *quite* right, I'm afraid,' said Alice timidly; 'some of the words have got altered.' 'It is wrong from beginning to end,' said the Caterpillar decidedly . . ."

"ESCROW"

NOTES OF CASES

COURT OF APPEAL

PRACTICE NOTE: AMENDMENT OF NOTICE OF APPEAL

Evershed, M.R., Denning and Romer, L.JJ.
20th October, 1952

At the hearing of an appeal, EVERSHED, M.R., said that it was unnecessary to apply for leave to amend a notice of appeal, if the other side were informed and did not object, and if there was no question as to the wording of the amendment; the court could then be informed when the appeal came on for hearing. Accordingly, a party desiring to amend should give notice to the other side of the precise nature of the proposed amendment; if no objection was made, no application to the court was necessary.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: CLAIM FOR NEW TENANCY: REASONABLENESS

J. W. Smart (Modern Shoe Repairs), Ltd. *v.* Hinckley and Leicestershire Building Society

Evershed, M.R., Denning and Romer, L.JJ.
20th October, 1952

Appeal from Leicester County Court.

The plaintiffs, who were shoe repairers, occupied the ground floor and basement of 102 Granby Street, Leicester, under a lease for seven years from September, 1945, at a rent of £325. The defendants in 1950 acquired Nos. 102 and 104, for the purpose of accommodating their local agent *C*, an estate agent and accountant, whose existing premises were insufficient. Number 104 was purchased with vacant possession. The plaintiffs brought proceedings under the Leasehold Property (Temporary Provisions) Act, 1951, for a new lease. The Act provides by s. 12 (3): "The court shall not order the grant of a new tenancy if it is satisfied . . . (*c*) that the landlord reasonably requires possession in order that the premises . . . or a substantial part . . . may be demolished or reconstructed . . . (*e*) that having regard to all the circumstances of the case greater hardship would be caused by ordering the grant of a new tenancy than by refusing to do so." The defendants objected that they had purchased the premises in order to reconstruct them to provide larger accommodation for their business, and that greater hardship would be caused by granting the application than by rejecting it. The judge held that the defendants reasonably required to possess and reconstruct the premises for their business purposes; but that the primary object for the possession and reconstruction was for the occupation of *C*, and that the requirements of s. 12 (3) (*c*) were not fulfilled; and he decided the question of hardship in favour of the plaintiffs. He granted a new lease for twelve months. The defendants appealed.

EVERSHED, M.R., said that under the subsection the question of reasonableness had particular reference to the landlord. However reasonable the defendants were otherwise, it could not properly be said that they wanted the premises for demolition or reconstruction. The Act was only temporary, and the defendants' right to possession was only temporarily postponed. There was no scheme for reconstruction in immediate contemplation. The question of reasonableness was one for the trial judge, and the court would be slow to reject his conclusion, and ought not to do so in the present case.

DENNING, L.J., agreeing, said that to satisfy s. 12 (3) (*c*), a landlord must show that demolition or reconstruction was the immediate and primary purpose.

ROMER, L.J., agreed. Appeal dismissed.

APPEARANCES: *G. A. Grove* (*Corbin, Greener & Cook*, for *Southall & Co.*, Hinckley); *J. P. Stimson* (*Allen & Overy*, for *Harding & Barnett*, Leicester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

NEGLIGENCE: SOUP SPILLED DOWN BACK OF GUEST AT RESTAURANT

Foster *v.* Bush House, Ltd.

Evershed, M.R., Romer, L.J., and Harman, J. 21st October, 1952

Appeal from Westminster County Court.

The plaintiff, a hospital matron of portly build, was attending a reunion dinner at the defendants' restaurant. She was seated at a table alongside other guests when a waitress, who was serving soup, tripped against the back of her chair and spilled soup down her back, causing damage quantified by the judge at £20, principally in respect of her dress. On an action for negligence, the judge said: "The fact was that the back of the plaintiff's chair, owing to her being distinctly plump, protruded a little farther from the table than that of her neighbours, and that the waitress unfortunately caught her toe against it, which threw her" (the waitress) "momentarily off her balance. Such measures as might have been taken to prevent such a protrusion, or to ensure that the waitress was warned of it, seemed to me either impracticable, or counsels of perfection rather than of prudence. The plaintiff's accident was, in my view, simply a piece of bad luck." He gave judgment for the defendants. The plaintiff appealed.

EVERSHED, M.R., said that the case was difficult; if the judge had intended that the duty of care placed on a waitress did not extend to seeing whether guests' chairs were out of line, as opposed to looking for other obstructions, such as a walking-stick dropped on the floor, he might well have misdirected himself. But it was not for the court to interfere with a finding below which concluded that the incident arose from an inadvertence falling short of a breach of duty to show care. But that conclusion must not be regarded as a licence to restaurant proprietors to allow their waiters to trip up and tip soup down the necks of their guests. The court's decision was based on the precise findings of fact by the judge below in the particular case.

ROMER, L.J., agreed, with regret. The case depended on the findings of fact, and could not be cited as authority that a waiter who tripped over a chair, and deposited soup or other food over a guest could not be held to be guilty of negligence.

HARMAN, J., agreeing, said that he was consoled by thinking that the case could never be described as "the waiter's charter." Appeal dismissed.

APPEARANCES: *H. Marnham* (*Cullen & Co.*); *D. P. Croom-Johnson* (*Barlow, Lyde & Gilbert*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: RENT-RESTRICTED PREMISES: WHETHER SUB-TENANT LAWFULLY IN POSSESSION

Dobbs *v.* Linford

Evershed, M.R., Romer, L.J., and Harman, J. 22nd October, 1952

Appeal from Chichester County Court.

In 1936 the plaintiff let to a tenant a house within the Rent Acts, the tenant covenanting "not to use the said premises for any purpose other than as a private dwelling-house and not to sublet or part with the possession of the premises (except as a furnished house) without the consent . . . of the landlord . . ." The tenant, unknown to the plaintiff, sublet the top floor to the defendant in 1943. In 1951 the tenant died, and the plaintiff discovered that the defendant was in possession of the top floor. In proceedings to recover possession, the defendant contended that she was a person to whom part of the premises had been "lawfully sublet" under s. 15 (3) of the Rent (etc.) Act, 1920. The judge made an order for possession. The defendant appealed.

ROMER, L.J., said that the judge had, rightly, treated the matter as one of construction of the lease. He had held that the

subletting was a breach of covenant; that to sublet was a non-compliance with the obligation not to use the premises for any purpose other than as a private dwelling-house, the covenant being inconsistent with the division of the house into more than one residence. The defendant had relied on *Downie* v. *Turner* [1951] 2 K.B. 112, but there the language was different, and it was contemplated that the premises might be divided into more than one dwelling-house (see also *Cook* v. *Shoesmith* [1951] 1 K.B. 752 and *Grove* v. *Portal* [1902] 1 Ch. 727). If the covenant had been not to part with possession of the whole or " any part," that would have been relevant for the purposes of construction. The premises had been used partly as a dwelling-house by the tenant and partly as a dwelling-house by the defendant, and that was a breach of covenant (see *Barton* v. *Keeble* [1928] Ch. 517). The judgment below was right, and the appeal must be dismissed.

EVERSHED, M.R., and HARMAN, J., agreed. Appeal dismissed.

APPEARANCES: *C. French* (*Maples, Teesdale & Co.*, for *Benning, Hoare & Drew*, Luton); *H. G. Garland* (*Large & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

ADOPTION: CONSENT OF PARENTS: UNREASONABLE REFUSAL

***In re* K, an infant**

Somervell, Jenkins and Hodson, L.JJ. 3rd November, 1952

Appeal from Derby County Court.

The child, the subject of the application for adoption, was born in March, 1950. Three weeks later, the mother left her husband in consequence of his treatment of her; on an application to the justices she was awarded the custody of the child and 15s. per week for its maintenance. As she had to go out to work, the mother arranged with the children's officer for the child to be placed with foster-parents, who were the present applicants, the father paying 15s. and the mother 5s. per week. The mother visited the child at intervals of three weeks or less. In March, 1952, she signed a form of consent to the adoption of the child by the foster-parents; she was not subjected to pressure or undue influence, and understood that she could withdraw the consent before a final order was made. At the hearing of the petition on 29th May, 1952, the mother was represented by a solicitor and withdrew her consent. She had no guardian *ad litem*, though she was an infant. By s. 3 (1) of the Adoption Act, 1950: " The court may dispense with any consent required . . . if it is satisfied . . . (*c*) in any case, that the person whose consent is required cannot be found . . . or that his consent is unreasonably withheld." The judge held that he had jurisdiction, having regard to the welfare, interests and wishes of the child, to dispense with the mother's consent. At the hearing, the judge was not aware that the mother was an infant, but he was informed of this before he delivered his reserved judgment. In his judgment he referred to the Adoption of Children (County Court) Rules, 1949, which require that an infant respondent should have a guardian *ad litem*, but decided, in the circumstances, to ignore that circumstance from a procedural and technical point of view. The mother appealed.

JENKINS, L.J., reading the judgment of the court, said that the appeal raised two questions: (1) whether the facts found afforded any evidence on which the judge could find that the mother's consent had been unreasonably withheld, and (2) if so, whether the proceedings below were defective, in that the mother was not provided with a guardian *ad litem*. The judge had considered *In re Hollyman* (1945), 61 T.L.R. 229, and *H.* v. *H.* [1947] K.B. 463, and had decided that, under the circumstances of the case, he had jurisdiction to dispense with the mother's consent. But the court must ask itself under what circumstances a parent, not guilty of any misconduct or dereliction of duty, was to be held to have acted unreasonably in withholding consent, when the effect of the order would be to extinguish for ever all parental rights, duties and responsibilities. It was undesirable and impracticable to attempt a definition covering all possible cases, but it was possible to specify certain facts, related to the circumstances of the present case, which plainly could not suffice to prove unreasonableness. First, that the order would conduce to the welfare of the child. If that was a proper ground, no person in poor circumstances could object to a proposed adoption by a person in more affluent circumstances. Secondly, that the child had been placed with foster-parents; if that were so, any respectable pair of foster-parents could enforce an adoption order against the parents' wishes. Moreover, s. 2 (6) (*a*) prohibited the making of an order unless the child had been in the care of the applicant for at least three months, a provision wholly inconsistent with the view that it was unreasonable to withhold consent when the child was with foster-parents. Thirdly, that a documentary consent had been given, and was later withdrawn. As to that, *In re Hollyman, supra*, which showed that under the Act of 1926 written consent could be withdrawn at any time before the making of the order, was no less applicable to the Act of 1950; also s. 3 (3) and the wording of the prescribed form of consent made it plain that the Act contemplated that a consent could be withdrawn. Why should not a parent change her mind? These three matters, on which the judge had relied, afforded no grounds at all, in the view of the court, for a finding of unreasonableness. Moreover, the judge had not had the advantage of being referred to *Hitchcock* v. *W. B. and F. E. B. and Others* [1952] 2 Q.B. 561, *ante*, p. 448, with which the court was in complete agreement. The second question, accordingly, did not strictly arise, but it seemed that the practice had always been to accept the consent of an infant mother as valid; see, for instance, *In re D. X.* [1949] Ch. 320. That was clearly right. In the Chancery Division, the rules did not provide that the parents should be parties, but they were entitled to be heard. Under the County Court Adoption Rules the parents were made respondents, and rr. 13 and 14 provided for the appointment of a guardian *ad litem* when the respondent was an infant. In ordinary cases, when the parents consented, it did not seem necessary to appoint a guardian; but in cases such as the present, it was desirable that a guardian should be appointed, and this should be made clear in the rules. Appeal allowed.

APPEARANCES: *J. Maude*, Q.C., and *Miss Lewis* (*Gibson and Weldon*, for *Miss M. A. Booth*, Derby); *W. K. Carter*, Q.C., and *B. Bush* (*Maddisons & Lambs*, for *L. Irving, Sitdown & Co.*, Derby); *H. Lightman* (*Sharpe, Pritchard & Co.*, for *E. H. Nichols*, Town Clerk, Derby).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

PROCEDURE: UNINCORPORATED FOREIGN ASSOCIATION: ADDITION OF PARTIES

Etablissement Baudelot *v.* R. S. Graham & Co., Ltd.

Sellers, J. 15th October, 1952

Summons.

A writ and statement of claim were issued in the name of " Etablissement Baudelot " as plaintiffs. By para. 1 of the statement of claim it was alleged that the plaintiffs were a company established under the laws of France and carried on business there; para. 2 alleged a contract of sale of certain goods by the plaintiffs to the defendants. The defendants made no admissions as to para. 1, save that they admitted that the plaintiffs carried on business in France; they admitted the contract. The defendants later inquired if the plaintiffs were incorporated under French law and were informed that the plaintiffs were incorporated under a law which provided for the incorporation of the heirs of an individual to carry on his business; that the instrument of incorporation was the will of *B*, deceased, and that the partners were *X*, *Y* and *Z*. In fact, the plaintiffs had never been formally incorporated by law, but had been treated as an informal association of a type recognised for certain purposes, taxes in particular, and had traded for some years and had been so taxed. The defendants took out a summons under Ord. 16, r. 11, to strike out the proceedings and dismiss the action on the ground that the plaintiffs were non-existent. The plaintiffs took out a summons under Ord. 16, r. 2, to add the names of *X*, *Y* and *Z* as plaintiffs. After some delay, both summonses came on for hearing at the trial of the action.

SELLERS, J., said there had been great delay in bringing forward the defendants' contention by summons, but, as it went to the root of the action, he did not feel that he could exercise his discretion to say that it was now too late to entertain. The plaintiffs had contended that there was an estoppel by record, as the contract had been admitted in the defence, so that the plaintiffs must be taken to exist; but an estoppel did not bind the court and if the plaintiffs were really non-existent the court must act accordingly. Both rules gave a wide discretion, but, after considering *Clay* v. *Oxford* (1866), L.R. 2 Ex. 54, and *Tetlow* v. *Orela, Ltd.* [1920] 2 Ch. 24, it must be accepted that r. 2 was not wide enough to authorise the joinder as plaintiffs of three named persons, if the original plaintiff was a dead man or in comparable circumstances. He would accept that the plaintiffs were not incorporated in France, but *X*, *Y* and *Z* had traded for years under the plaintiffs' name

and had been so taxed. It was accordingly odd to liken the plaintiffs to a dead man; the name of the plaintiffs was one adopted by *X*, *Y* and *Z* for trading purposes, and was a trade name, so that the action had always been one brought by the three partners, and it would be artificial to regard the plaintiffs as a separate and non-existent legal entity. It was very different from an action brought in the name of a non-existent limited company. As in *Alexander Mountain & Co.* v. *Rumere, Ltd.* [1948] 2 K.B. 436 and *Belgian Economic Mission* v. *A. P. & E. Singer, Ltd.* [1950] W.N. 418, this was a mere error of misnomer which the court could correct. Accordingly, the defendants' summons would be dismissed and the plaintiffs would be given leave to amend by adding *X*, *Y* and *Z* as plaintiffs. Judgment for the plaintiffs.

APPEARANCES: *J. R. Adams*, Q.C., *J. Megaw* and *J. F. Donaldson* (*Keene, Marsland & Co.*); *L. Caplan* (*Crawley and de Reya*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CONTRACT: NON-EXISTENT COMPANY

Newborne *v.* Sensolid (Great Britain), Ltd.

Parker, J. 23rd October, 1952

Action.

The plaintiff L.N., who was in process of forming a company of produce merchants to be known as L.N. (London), Ltd., after negotiations sent to the defendants a contract note of sale signed "L.N. (London), Ltd." with "L.N." underneath, which was accepted and signed by the defendants. At the time both parties thought that the company, which was not incorporated till later, was a contracting party. In an action for damages brought under the contract, the defendants alleged, *inter alia*, that the contract was a nullity as having been expressed to be made on behalf of a non-existent company, and counter-claimed for rescission.

PARKER, J., said that that the plaintiff had contended that the case was the converse of *Kelner* v. *Baxter* (1866), L.R. 2 C.P. 174, which showed that a person contracting ostensibly as agent for a non-existent principal could be held personally liable, and that it would be odd if a man could be liable and yet unable to sue. Further, in *Harper & Co.* v. *Vigers Brothers* [1909] 2 K.B. 549 Pickford, J., seemed to have said that persons knowingly contracting as agents for a non-existent principal could sue, although the defendants would not have contracted if they had known the true position; that case seemed to go rather far, as the contract would be plainly voidable. But in the present case there was no signature as agent: the plaintiff had not signed "on behalf of" the company, but as a director. That purported to be the signature of the company, not of an agent who agreed to do certain things on behalf of the company. The company being non-existent, the document was a nullity, and the defendants succeeded.

Judgment for the defendants.

APPEARANCES: *M. Littman* (*Ashurst, Morris Crisp & Co.*); *L. Pearl* (*Godfrey Davis & Foster*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: EVIDENCE AFTER CONVICTION: NON-DISCLOSURE TO THE DEFENCE

R. *v.* Crabtree

Lord Goddard, C.J., Parker and McNair, JJ.
27th October, 1952

Appeal against sentence.

The appellant pleaded guilty to charges of receiving and garage-breaking. Before sentence, a police officer gave evidence as to his antecedents and character, including a statement that there was no doubt that he was a member of a gang of persistent thieves and safe-breakers. Information as to this evidence had not been given to the defence, in conformity with the direction of Home Office circular No. 188/50, which dealt with police evidence of previous convictions and character, and stated, "The Secretary of State is of opinion that details of previous convictions should not be given to defending solicitors before trial unless the chief officer of police is satisfied that the solicitor has his client's authority for requesting this information. As regards details of antecedent history other than convictions, the Secretary of State suggests that there is no reason why this should be given." At trial, objection was taken to this evidence, but it was admitted, and counsel for the defence, being taken by surprise, was unable to challenge it. The appellant was sentenced to imprisonment for nine years: he appealed against sentence on grounds which included that the evidence as to his associates was inadmissible, and that it was irregular that his counsel had not previously been informed that it would be given.

LORD GODDARD, C.J., said that the circular, in general, was right; it was obviously desirable that a court, before pronouncing sentence, should be informed as to the habits and associates of the prisoner, and if the police evidence showed that the witness was speaking as to ascertained facts, that was evidence which the court could properly take into account when considering sentence. It was generally prudent that a solicitor should before trial ascertain whether his client had any previous convictions, in order that counsel might be suitably warned; there was no objection to the suggestion that the chief officer should know that the client authorised the request for this information. But the court did not agree with the suggestion that matters of antecedent history other than convictions should not be disclosed; if evidence of bad character or associates was to be given, that ought to be communicated to the defence, so that there might be proper cross-examination if the accused disputed the evidence; and the court would suggest that the circular should be altered in some particulars. In the present case, the appellant had deserved a heavy sentence; but, on the whole, it would be right to reduce the sentence to seven years.

Appeal allowed.

APPEARANCES: *Miss D. K. Dix* (*Registrar, Court of Criminal Appeal*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Education (Miscellaneous Provisions) Bill [H.C.] [14th November.

To amend the law relating to education in England and Wales; and to make further provision with respect to the duties of education authorities in Scotland as to dental treatment.

Read Second Time:—

Colonial Loans Bill [H.C.] [14th November.
New Valuation Lists (Postponement) Bill [H.C.] [13th November.
Public Works Loans Bill [H.C.] [12th November.

B. QUESTIONS

NATIONAL INSURANCE CONTRIBUTIONS (PROSECUTIONS)

Mr. ISAACS asked whether the Minister of National Insurance was aware that, in many charges of failure to pay insurance contributions coming before petty sessional courts, it was necessary to bring officials from Newcastle to prove the allegation of non-payment; that when cases were adjourned this necessitated a second journey for the officials concerned; and whether he would permit the issue of a certificate from the Newcastle office giving the required evidence.

Mr. OSBERT PEAKE in reply said that there was at present no provision authorising proof of the necessary facts by means of a certificate in these cases. He had noted the point for consideration when opportunity for legislation offered. [7th November.

RENT TRIBUNALS

Mr. MARPLES stated that at present there were sixty-eight rent tribunals in England and Wales; twelve had been closed or merged since October, 1951, and the average cost per case to the taxpayer was £15. [11th November.

PROBATE REGISTRY, CARLISLE (CLOSING)

Mr. SCOTT asked for a statement regarding the proposed closing of the Probate Registry at Carlisle and the amount of saving which would result from such closure. The ATTORNEY-GENERAL said that a proposal that certain district probate registries should be closed was being examined by the President of the Probate Division. He could not say what saving would result from the closing of any one registry. [11th November.

CRIMES OF VIOLENCE

Sir DAVID MAXWELL FYFE stated that before corporal punishment was abolished as a judicial penalty in September, 1948, the only important offences for which it could be imposed on male adults by the courts were offences of armed robbery and robbery with violence contrary to s. 23 (1) of the Larceny Act, 1916.

The figures for these offences were as follows :—

1946	1947	1950	1951
804	842	812	633

The provisional figure for the first six months of 1952 was 359.

Most other crimes of violence against the person had increased in recent years. The figures were :—

	1948	1951
Felonious wounding	646	1,078
Malicious wounding	3,547	4,445
Rape	252	335
Indecent assault on females	5,659	7,287

None of these offences was punishable corporally before 1948.

[13th November.

STATUTORY INSTRUMENTS

Aerated Waters Wages Council (England and Wales) Wages Regulation Order, 1952. (S.I. 1952 No. 1928.) 6d.

Chocolate, Sugar Confectionery and Cocoa Products (Amendment No. 4) Order, 1952. (S.I. 1952 No. 1961.)

County of Dorset (Electoral Divisions) Order, 1952. (S.I. 1952 No. 1947.)

Diseases of Animals (Therapeutic Substances) Order, 1952. (S.I. 1952 No. 1933.) 11d.

Feeding Stuffs (Rationing) (Amendment) Order, 1952. (S.I. 1952 No. 1921.)

Import Duties (Drawback) (No. 12) Order, 1952. (S.I. 1952 No. 1934.)

Import Duties (General Ad Valorem Duty Reduction) (No. 2) Order, 1952. (S.I. 1952 No. 1922.)

Importation of Forest Trees (Prohibition) Order, 1952. (S.I. 1952 No. 1929.)

Lincolnshire River Board (Reconstitution of the Ancholme Internal Drainage Board) Order, 1952. (S.I. 1952 No. 1935.) 5d.

London Traffic (Prescribed Routes) (No. 22) Regulations, 1952. (S.I. 1952 No. 1940.)

London Traffic (Warrengate Lane, Potters Bar) Regulations, 1952. (S.I. 1952 No. 1941.)

Ploughing Grants (No. 2) Scheme, 1952. (S.I. 1952 No. 1936.) 5d.

Sheffield—Grimsby Trunk Road (Tudworth Hall to Old Laith House Diversion) (Variation) Order, 1952. (S.I. 1952 No. 1926.)

Stopping up of Highways (Kent) (No. 4) Order, 1952. (S.I. 1952 No. 1939.)

Stopping up of Highways (Liverpool) (No. 1) Order, 1952. (S.I. 1952 No. 1927.)

Teachers Superannuation (Reciprocity with India and Pakistan) Revoking Scheme, 1952. (S.I. 1952 No. 1960.)

Therapeutic Substances Regulations, 1952. (S.I. 1952 No. 1937.) 1s. 8d.

Tin Box Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1952. (S.I. 1952 No. 1938.) 5d.

Trading with the Enemy (Enemy Territory Cessation) (Austria) Order, 1952. (S.I. 1952 No. 1923.)

West Surrey Water Order, 1952. (S.I. 1952 No. 1946.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

"Goods Vehicles" and the Use of Trailers

Sir,—Having read the report of the case *James* v. *Davies*, at p. 729, vol. 96, of THE SOLICITORS' JOURNAL, it occurs to us that the court's decision may have far-reaching effects.

We have in mind the man who is in a small way of business, such as the builder, plumber, electrician, who has a trailer attached to his private car in which he carries his tools and materials used in his trade. This type of conveyance has been very noticeable in the last few years. Then, in addition, there is the private owner who also attaches a trailer to his private car to move goods on infrequent occasions. We have in mind the camper who might at various times in the season convey his camping gear comprising tent, beds and other camp equipment from place to place. With the present decision, and bearing in mind the words "whether in the course of trade or otherwise," can it not now be said that these persons as given in the examples above are also committing an offence if they do not pay the rate of duty appropriate to a goods vehicle ?

London, W.C.2. W. A. G. DAVIDSON & Co.

Time in Contracts for the Sale of Houses

Sir,—Would not the following clause which is now being generally used in this city meet the difficulty mentioned by H. N. B. in his letter (*ante*, p. 734), of framing a satisfactory contract without making time of the essence ?

The clause is, "If at any time after the date fixed for completion the vendor shall give fourteen days' notice in writing to the purchaser or to the purchaser's solicitors requiring completion then time shall be regarded as of the essence of this contract and the provisions of cl. 32 of The Law Society's Conditions of Sale shall be immediately operative after the expiration of such notice."

This clause in effect enables the vendor to make time of the essence of the contract by notice, without being forced to do so.

Leicester. BERTRAM PLUMMER.

SOLICITORS BENEVOLENT ASSOCIATION

The annual general meeting of the Solicitors Benevolent Association was held on 5th November, 1952, at 60 Carey Street. The chairman, Mr. Godfrey E. Castle, presided. The chairman welcomed the Vice-President of The Law Society—his presence was a gratifying sign of the interest taken by The Law Society in the association's work. The chairman stressed the need for more subscribers; as shown by the accounts, the sum spent in relief amounted to nearly £33,000 and income for the year had been overspent by £8,693 if legacies were discounted. The association's total membership was still far short of half the number of practising solicitors, although nearly 300 solicitors had joined during the year. The chairman thanked The Law Society for its generous donation of 100 guineas, and the twenty-one provincial law societies*, which had made donations during the year, and expressed the hope that many more provincial law societies would contribute to the association's funds in this way.

The board of directors were re-elected and were thanked for their services in the past year by the Vice-President of The Law Society. A vote of thanks to the chairman for presiding at the meeting and for the valuable time he had spared from his office in the North to devote to the association's cause during the past two years as vice-chairman and chairman respectively was moved by Major Reginald Bullin.

Copies of the annual report and forms of application for membership will be gladly sent on request to the secretary of the Solicitors Benevolent Association at its offices, Clifford's Inn, Fleet Street, London, E.C.4.

At the monthly meeting of the board of Directors which followed, Mr. George Francis Pitt-Lewis (London) was elected chairman, and Mr. Leonard Farmer Paris (Southampton) vice-chairman, for the ensuing year. Eighteen solicitors were admitted to membership of the association, bringing the total membership up to 7,670. The sum of £3,306 7s. was distributed in relief to thirty-nine beneficiaries, £223 2s. of this being for "special" grants for clothing, convalescence, etc.

* Devon and Exeter Law Society, Kent Law Society, Gloucester and Wiltshire Incorporated Law Society, Cambridge and District Law Society, Southend and District Law Society, Blackpool and Fylde District Law Society, Cornwall Law Society, Leicester Law Society, Isle of Wight Law Society, Bury and District Law Society, Hampshire Incorporated Law Society, Monmouthshire Incorporated Law Society, Northamptonshire Law Society, Suffolk and North Essex Law Society, West Surrey Law Society, Chorley Law Society, Croydon and District Law Society, Merthyr Tydfil and Aberdare Incorporated Law Society, Somerset Law Society, Tunbridge Wells and District Law Society and Worthing Law Society.

NOTES AND NEWS

Honours and Appointments

Mr. ANEURIN REES, solicitor of Prestatyn, has been elected Moderator for 1953 of the North Wales Association of Presbyterian Churches.

The following appointments are announced in the Colonial Legal Service: Mr. D. L. BATE, Crown Counsel, Nigeria, to be Senior Crown Counsel, Nigeria; Mr. G. G. BRIGGS, Senior Crown Counsel, Nigeria, to be Legal Secretary, Eastern Region, Nigeria; Mr. W. E. M. DAWSON, Crown Counsel, Tanganyika, to be Legal Draftsman, Nigeria; Sir J. H. HENRY, Legal Draftsman, Tanganyika, to be Solicitor General, Tanganyika; Mr. R. HYNE, Puisne Judge, Gold Coast, to be Chief Justice, Fiji; Mr. A. W. JONES, Registrar of Titles, Kenya, to be Resident Magistrate, Kenya; Mr. H. H. MARSHALL, Senior Crown Counsel, Nigeria, to be Legal Secretary, Northern Region, Nigeria; Mr. M. N. MUNIR, Crown Counsel, Tanganyika, to be Solicitor General, Cyprus; Mr. D. S. STEPHENS, Crown Counsel, Nigeria, to be Senior Crown Counsel, Nigeria; Mr. A. C. HOGG to be Magistrate, Sierra Leone; Mr. S. F. S. LI to be Crown Counsel, Hong Kong; and Mr. D. L. NEVE to be Resident Magistrate, Uganda.

Personal Notes

Mr. Cyril Leigh, solicitor, of Leeds, was married on 10th November to Miss Eunice P. Berg, of Leeds.

Mr. W. H. Lord, solicitor, of Halifax, celebrated his golden wedding on 13th November.

Miscellaneous

AMALGAMATION OF ISLINGTON AND STEPNEY RENT TRIBUNALS

The existing rent tribunals with offices at Islington and Stepney will, with effect from the 1st January, 1953, be amalgamated. The Minister of Housing and Local Government has terminated the existing members' appointments as from that date and appointed the following persons to the membership of the new tribunal:—Chairman, Mr. H. Samuels; Member and Reserve Chairman, Mr. F. G. Challis, C.B.E.; Member, Miss L. H. MacGarvey; Reserve Members, Rev. W. Allen Harling, Councillor J. Pam, Mr. J. W. Bellamy, Mr. A. L. Dobson and Councillor Mrs. A. P. Bunn.

The address of the new tribunal office will be 220/225 Upper Street, Islington, N.1.

JAPAN FREED FROM TRADING WITH THE ENEMY RESTRICTIONS

Consequent on the conclusion of the Treaty of Peace with Japan the Board of Trade have made the Trading with the Enemy (Enemy Territory Cessation) (Japan) Order, 1952, under which as from 20th November Japan finally ceases to be treated as enemy territory for all purposes of the Trading with the Enemy Act and orders. From that date persons resident in or carrying on business in Japan cease to be enemies within the definition of that Act. Existing Japanese property, rights and interests which are already under Board of Trade or Custodian control will remain under control, being "Japanese property" as defined in art. 14 of the Japanese Peace Treaty. Current trade with Japan was freed from trading with the enemy restrictions in January, 1950. The address for correspondence arising out of the present order is:—Administration of Enemy Property Department, Lacon House, Theobalds Road, London, W.C.1.

EXCESS PROFITS LEVY

FINANCE ACT, 1952, s. 56

The Treasury have certified under the above section that an increase in output of crude petroleum, asbestos and certain metals over output at the normal rate is essential in the national interest. The metals are:—chrome, cobalt, columbium, copper, gold, iron, lead, manganese, molybdenum, tantalum, tin, tungsten, vanadium, zinc.

A body corporate which in the Excess Profits Levy period makes profits from an output exceeding its normal rate in mining any of these metals, getting crude petroleum from oil wells, or the extraction of asbestos from natural deposits may, by giving written notice to its Inspector of Taxes within twelve months from the end of its first Excess Profits Levy chargeable accounting period, claim a measure of relief from Excess Profits Levy, on the basis laid down by the section, in respect of the normal rate of profit on the additional output.

The Treasury will in due course make regulations for carrying s. 56 into effect and for determining the normal rate of profit and the extent of any additional output.

An exhibition and sale of handicrafts by disabled ex-servicemen and women will be held from 26th November to 3rd December (9.30 a.m. to 5.30. p.m.) at Pimms, 94 Bishopsgate, by the Emergency Help and Aftercare Department of the St. John and British Red Cross Society. A disabled man will be on the premises each day demonstrating his craft, and it is hoped that the public will attend in large numbers to solve their Christmas present problems at extremely moderate prices.

The Radnorshire Development Plan and the Sunderland Development Plan have been approved with modifications by the Minister of Housing and Local Government. The plans as approved will be deposited in the council offices for inspection by the public.

SOCIETIES

Owing to the lamented sudden death of Mr. A. W. Forsdike, Mr. G. E. Reed, of Banstead, has now been elected President, and Mr. J. C. Cotton, of Sutton, has been elected additional Vice-President, of the MID-SURREY LAW SOCIETY.

GRAY'S INN

Thursday, 13th November, 1952, being the Grand Day of Michaelmas Term, the treasurer, The Hon. Mr. Justice Sellers, M.C., and the Masters of the Bench entertained to dinner in Hall the following guests: The Right Hon. the Lord Chancellor (Lord Simonds), The Most Hon. the Marquess of Salisbury, K.G., The Treasurer of the Hon. Society of the Middle Temple (The Right Hon. the Earl Jowitt), The Right Hon. Viscount Samuel, G.C.B., G.B.E., The Right Hon. Lord Morton of Henryton, M.C., The Right Hon. the Master of the Rolls (Sir Raymond Evershed), The Hon. Mr. Justice Vaisey, The Vice-Chancellor of Oxford University (Sir Cecil Bowra, F.B.A.), The President of the Royal Academy (Sir Gerald Kelly) and The Treasurer of the Hon. Society of Lincoln's Inn (Mr. Cecil Turner). The Benchers present, in addition to the treasurer, were: Mr. Noel Middleton, Q.C., Mr. N. L. C. Macaskie, Q.C., Mr. R. Warden Lee, Sir Arthur Comyns Carr, Q.C., The Hon. Mr. Justice McNair, The Hon. Mr. Justice Barnard, Sir Leonard Stone, O.B.E., Mr. S. E. Pocock, O.B.E., Sir John Forster, K.B.E., Q.C., Mr. Henry Salt, Q.C., Mr. H. Durley Grazebrook, Q.C., Mr. Michael Rowe, C.B.E., Q.C., The Right Hon. Lord Reid, The Right Hon. Sir Lionel Leach, Q.C., Mr. Edward Maufe, R.A., Mr. C. A. J. Bonner, Mr. R. C. Vaughan, O.B.E., M.C., Q.C., Mr. G. W. Tookey, Q.C., Mr. Dingle Foot, with the Preacher (The Rev. Canon F. H. B. Ottley, M.A.) and the Under-Treasurer (Mr. O. Terry).

His Royal Highness The Duke of Edinburgh has consented to become Patron of the SELDEN SOCIETY.

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION

ANNUAL FESTIVAL DINNER

The 38th annual festival dinner of the above Association was held on Thursday, 30th October last, at the Connaught Rooms, Great Queen Street, W.C.2, and the President, Mr. John W. W. Sachs, was in the chair.

The Right Hon. Lord Cohen was the principal guest and was accompanied by Lady Cohen.

After the loyal toasts had been honoured, Lord Cohen proposed the toast of "The Association," saying that he was greatly honoured in being entrusted with that toast in the year of the Association's Diamond Jubilee. He likened solicitors' managing

clerks to "back-room boys," describing them as the brains of any movement. The barristers stood in the limelight, did the talking, and if the case ended in victory, got most of the credit, and sometimes the instructing solicitor saw his name in the Law Reports, but no one heard of the name of the managing clerk, although the success or failure might largely depend on the skill and assiduity with which he had assembled the documents and taken the particulars of witnesses before the brief was delivered to counsel. His lordship said that he was most struck by the wide field of activity covered by the Association and was particularly interested in the scheme adopted to institute examinations for the qualification of managing clerks by certificate, an innovation which, he felt sure, must have had the effect of raising the standard of efficiency of managing clerks.

In responding to the toast of "The Association," Mr. John W. W. Sachs, after thanking Lord Cohen, welcomed the many distinguished guests from the various branches of the law, including persons from places as far distant as Bristol. He further acknowledged greetings from the Bournemouth branch. He recalled that the law clerk shared a certain personal affinity with the late Charles Dickens, in that for a time that author was a law clerk, although the Association was not in being during his lifetime; but in any case he left the profession in less than the minimum period of ten years which was the necessary qualification for membership of the Association. Unfortunately for the profession, since that time too many clerks had forsaken the law, which had depleted the numbers and created a very grave problem. The Association had put forward certain proposals which he was hoping would set back the clock and bring a larger number of new entrants into the law and, what was more important, keep them there. The Association had devoted themselves, in the main, to providing increased educational facilities, and to the setting up of examinations by which an aspirant to a managing clerkship could test his abilities and thus have a basic training and a standard of recognition.

The Right Hon. Lord Ogmore then proposed the toast of "Her Majesty's Judges," adding that he had just returned to legal practice as a sort of legal Rip Van Winkle after thirteen years in the Army and Government service. He had found many changes: income tax had risen, there was a scarcity of trained clerks, managing clerks and junior clerks, and when he tried to look up some of the pre-war stock he found that not one of them had remained in the law. He also found that the expert to which they had been used in the pre-war days was no longer quite apparent, but found that above all the standard of Her Majesty's judges was the same as ever—in that there had been no change. They were, as always, one of the rocks upon which this great country was built. Solicitors, he said, had had a 50 per cent. rise since 1881, but he did not think that the judges had had any rise at all. He felt that the remuneration of the judges, whom he called great public servants, must be considered in the very near future. He did not know for how much longer the Bar was going to exist. Barristers had no goodwill to sell, and no pensions, and he felt that a hard life of experience in the next few years would in all probability mean adjustments there.

The Hon. Mr. Justice Karminski responded to the toast, saying that he would not join issue with Lord Ogmore in his very touching reference to their salaries, but understood they were fixed as far back as 1834, since when he could think of nothing that had not gone up except platform tickets. They were all very conscious of the importance and value of solicitors' managing clerks.

The Right Hon. Sir Lionel Heald, Q.C., M.P., Her Majesty's Attorney-General, in proposing the toast of "The Legal Profession," said that as Attorney-General he had the great honour of being the titular head of one of the branches of that profession. He thought it was not always that Attorney-Generals were regarded in the light in which he liked to think they must be regarded now that he had been asked to perform that duty. As barristers or solicitors they belonged to the same great brotherhood, but believed that public esteem for the law had improved in the last few years. For that he felt there were various reasons, one being the Legal Aid Scheme. There was, however, nothing new about legal aid, as it had been going on for many years: the only difference was that in the past it was usually free. In a quiet way the public got a good deal of advice from both branches of the profession, and with the success of the Legal Aid Scheme people were appreciating that more and more. He believed that the second reason for improvement in public esteem in regard to the law was what he liked to call the front line troops, the solicitors' managing clerks, the people who come into direct contact with the general public. He wondered how many would like to change places for twenty-four hours with a solicitors' managing clerk, who had to stand up and give the answers at once. He felt that they were doing a very difficult job, and very often they were not sufficiently appreciated.

His Honour Judge Blagden replied to this toast, and in a speech of great erudition discussed the topic of the lawyer in literature. The overwhelming majority of the profession believed and acted on the principle that to some degree, at all events, it owed a duty, not merely to its client, but to the court before which it practised. It applied in a greater or less degree to one who acted as an advocate, whether counsel, solicitor, back-room boy or front-line trooper, and he felt and believed that as long as the profession kept that high sense of duty which the over-all majority undoubtedly did, it would continue in perpetuity to play a most useful and honourable part in organised society.

The toast of "The Ladies and Guests" was proposed by the Hon. Mr. Justice Vaisey. He described it as a very comprehensive toast. In coupling the name of the Hon. Charles Russell with the toast he wished to say what a splendid thing it was that a worthy follower of a grandfather and great-grandfather was now in Lincoln's Inn engaged in a career which, he was quite confident, would carry him very far. His lordship added that it was always a great pleasure for him to come to the Association's festival dinners. He found it most stimulating to be among so many to whom he owed much in former days. At meetings of the Association he felt that they were, in a sense, a corporate body of lawyers all together.

In responding to the toast, the Hon. Charles Russell said that at the first tribunal at which he had appeared there were no less than eight counsel. Of the legal profession he said:—

> "Though they make jokes about us
> They cannot do without us."

The toast of "The Chairman" was proposed by Mr. F. D. Hammond, in the course of which he said that it was perhaps fitting that a senior Vice-President should be proposing the toast of the youngest President, but that was not desired. That position was not attained except by hard work. Three things at least were required to fill the office: service to the Association, ability and character. To these attributes the Chairman had not so very long ago added qualification as a solicitor.

The President suitably responded, and thanked Mr. F. T. Adams, other members of the social purposes committee, and the guests, some of whom he described as invitees, for conspiring that evening to make the gathering such an exceptionally happy one.

Mr. H. B. Lawson (member Law Society Council and solicitor to Lloyds Bank, Ltd.) is giving an informal talk to members of the SOLICITORS' ARTICLED CLERKS' SOCIETY on the subject of "The Functions and Prospects of Salaried Solicitors in General, and Service with Banks in Particular," at The Law Society's Hall, Chancery Lane, W.C.2, on Tuesday, 25th November, 1952, at 7 p.m. Refreshments from 6 p.m.

The UNION SOCIETY OF LONDON (meetings in the Common Room, Gray's Inn, at 8 p.m.) announces the following subjects for debate in November–December, 1952:—Wednesday, 26th November: "That this House deplores the principle of equal pay for women"; Friday, 5th December (joint debate with Gray's Inn Debating Society: at this debate, which will be held in Gray's Inn Common Room at 8 p.m., the Union Society will be the guests of the Gray's Inn Debating Society): "That this House regrets that Columbus discovered America"; Wednesday, 10th December: "That this House would welcome the re-introduction of corporal punishment"; Wednesday, 17th December: "That this House prefers the Welfare State to Merrie England."

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).